

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXCLUDE
DEFENDANTS' EXPERT REPORT REGARDING THE FEASIBILITY OF
PLAINTIFFS' HYPOTHETICAL ALUM REMEDIATION STRATEGY (Dkt. No. 2242)**

TABLE OF CONTENTS

LEGAL STANDARD	2
DISCUSSION	3
I. DR. CONNOLLY AND DR. COALE ARE QUALIFIED TO OPINE AS TO THE NATURAL SCIENCE ASSUMPTIONS UNDERLYING THE STRATUS CV OPINION SURVEY	3
A. Dr. Connolly	3
B. Dr. Coale	5
C. Drs. Connolly and Coale Do Not Offer Economic or Sampling Theory Testimony	6
II. THE CONNOLLY REPORT IS A TIMELY AND APPROPRIATE RESPONSE TO PLAINTIFFS' DAMAGES TESTIMONY	8
III. THE CONNOLLY REPORT'S ANALYSIS AND CRITIQUE OF PLAINTIFFS' HYPOTHETICAL PROPOSED ALUM TREATMENT PROGRAM IS RELEVANT AND ADMISSIBLE	9
A. The Connolly Report is Relevant to Assessing the Reliability of the CV Damages Estimation	11
B. The Connolly Report is Relevant to Assessing Whether the Stratus CV Survey Measures Natural Resource Damages	16
C. Even if Plaintiffs' Position Were Correct, the Connolly Report is Relevant to Whether the Survey Respondents Believed the False Statements Presented in the CV Survey	18
CONCLUSION	20

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Allen v. Wal-Mart Stores, Inc.</i> , 241 F.3d 1293 (10th Cir. 2001)	20
<i>Attorney General of Oklahoma v. Tyson Foods, Inc.</i> , 565 F.3d 769 (10th Cir. 2009)	2
<i>Dodge v. Cotter Corp.</i> , 328 F.3d 1212 (10th Cir. 2003)	2
<i>New Mexico v. General Electric</i> , 467 F.3d 1223 (10th Cir. 2006)	1, 16, 17, 18
<i>Norris v. Baxter Healthcare Corp.</i> , 397 F.3d 878 (10th Cir. 2005)	2
<i>Personnel Dept., Inc. v. Professional Staff Leasing Corp.</i> , 297 Fed. Appx. 773 (10th Cir. 2008).....	19
<i>Thunder Basin Coal Co. v. S.W. Pub. Serv. Co.</i> , 104 F.3d 1205 (10th Cir. 1997)	20
STATUTES	
42 U.S.C. § 9607(f).....	1, 16
OTHER AUTHORITIES	
Amended Scheduling Order, Dkt. No. 1376.....	8
Defendants’ Motion to Strike Stratus Report, Dkt. No. 2272.....	1, 11
Fed. R. Civ. P. 26(a)(2).....	9
Fed. R. Evid. 401	10
Fed. R. Evid. 403	9
Fed. R. of Evid. 702.....	2, 7

Defendants respectfully submit this brief in opposition to Plaintiffs' motion (Dkt No. 2242) ("Motion or Mot.") to strike the report submitted by Drs. Connolly, Coale, and Sullivan addressing the natural science assumptions and representations made by the authors of Plaintiffs' contingent valuation ("CV") public opinion survey.¹ Mot. Ex. A ("Connolly Report").

As part of their CV public opinion survey, Plaintiffs undertook to "educate" respondents as to the condition of the IRW and asked them to bid on the use of a hypothetical remediation program of alum treatments. Mot. at 2-3; Ex. 1 (Desvousges Rpt.) at 32-44; Ex. 2 (Future Damages Rpt.) at 4-16 to 4-23; *see also* Defendants' Motion to Strike Stratus Report, Dkt. No. 2272, at 2-3. Specifically, Plaintiffs found that many members of the public believe that the IRW is a healthy, vibrant ecosystem. This view conflicts with Plaintiffs' allegations in this litigation, so Plaintiffs' CV public opinion consultant designed an "education" program to tell survey respondents that the IRW is in poor shape, and that alum treatments would safely and effectively restore the IRW to its (hypothetical) condition in 1960. Mot. at 2-3; Ex. 1 (Desvousges Rpt.) at 33. The purpose of this approach, according to Plaintiffs, was to establish the value that members of the Oklahoma public assign to accelerating this theoretical restoration. Plaintiffs' presentation, however, was incomplete and in many ways untruthful. As the Connolly Report demonstrates, it included many faulty assumptions and even misrepresentations regarding conditions in the IRW and the feasibility of alum treatments. Mot. Ex. A *generally*. Plaintiffs do not deny this. In fact, Plaintiffs admit that their CV opinion survey provided the respondents with information that is not true. Mot. at 21-22. In fact, they move to strike the Connolly Report

¹ Plaintiffs propose their CV survey as a measure of "natural resource damages" under CERCLA. *See, e.g.*, 42 U.S.C. § 9607(f); *New Mexico v. General Electric*, 467 F.3d 1223, 1244-45 (10th Cir. 2006). Defendants have filed a motion seeking judgment as a matter of law on Plaintiffs' CERCLA claims. *See* Dkt No. 1872. Because the CV study has no relevance to Plaintiffs' other claims outside of the CERCLA context, if the Court grants that motion, the CV study, the Connolly Report, and the issues addressed in this brief will become moot.

on the basis that misleading survey participants with “information that is not factually correct” is allegedly commonplace and appropriate in CV public opinion surveys, rendering the Connolly Report irrelevant. Mot. at 17-25. In so arguing, Plaintiffs demonstrate compellingly why their CV methodology is biased, unreliable, and unconnected to any actual measure of damages or practicable method of remediation in the IRW. The Connolly Report provides natural science testimony relevant to evaluating the reliability of the CV methodology, and is therefore admissible under Federal Rule of Evidence 702.

LEGAL STANDARD

Federal Rule of Evidence 702 permits “a witness qualified as an expert by knowledge, skill, experience, training, or education” to testify regarding “scientific, technical, or other specialized knowledge [that will] assist the trier of fact to understand the evidence or to determine a fact in issue” so long as “(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.” Fed. R. Evid. 702. Trial courts are charged with ensuring that expert testimony presented to the factfinder is both relevant and reliable. *Attorney General of Oklahoma v. Tyson Foods, Inc.*, 565 F.3d 769, 779-781 (10th Cir. 2009); *Dodge v. Cotter Corp.*, 328 F.3d 1212, 1221 (10th Cir. 2003). The Court must first “determine if the expert’s proffered testimony has a reliable basis in the knowledge and experience of his or her discipline.” *Norris v. Baxter Healthcare Corp.*, 397 F.3d 878, 883-84 (10th Cir. 2005) (quotations, ellipses omitted). Then, the Court must determine whether the challenged experts’ reasoning and methodology is reliable. *See id.* at 884. If an expert’s testimony is grounded in the expert’s area of specialized knowledge, based on reliable data and methodology, and soundly applied to the facts of the case, the testimony should be admitted.

DISCUSSION

I. **DR. CONNOLLY AND DR. COALE ARE QUALIFIED TO OPINE AS TO THE NATURAL SCIENCE ASSUMPTIONS UNDERLYING THE STRATUS CV OPINION SURVEY**

The Connolly Report addresses the natural science assumptions, representations, and misrepresentations that Plaintiffs’ consultants made in “educating” survey participants regarding conditions in the IRW and the efficacy of remediating IRW waters and soils through alum treatment. Dr. Connolly and Dr. Coale are well qualified to testify to the facts and opinions set forth in the Connolly Report.

A. **Dr. Connolly**

Dr. Connolly sponsors Sections 2 and 3 of the Connolly report. Section 2 addresses conditions in the IRW. It rebuts the survey’s use of 1960 as a “baseline” for recovery, demonstrating that given a dearth of data it is impossible to know with confidence what conditions existed in the IRW in 1960.² Section 2 also addresses the multiple influences that have affected water quality in the IRW since 1960, but which were omitted from the CV survey instrument.³ *See* Mot. Ex. A at 4-6. Next, Section 2 demonstrates how the survey developers relied on Plaintiffs’ natural scientists for their understanding of prevailing conditions in the IRW,

² For example, Plaintiffs’ survey informed respondents that in 1960 it was possible to see down 10 feet into the water in Lake Tenkiller. Plaintiffs have not a shred of evidence to support this claim. *See* Mot. Ex. A at 4. Similarly, Plaintiffs’ survey consultants presented respondents with photographs that they claimed represented lake and river conditions in 1960, but which are unsupported by any historical data to support the claim that they accurately and fairly represent lake and river conditions in the IRW in 1960. *See id.* at 5-6.

³ For example, the CV survey omitted any mention of urbanization and accompanying influences such as deforestation, erosion, and waste water treatment. *See* Mot. Ex. A at 6.

yet repeatedly misrepresented their conclusions.⁴ *See* Mot. Ex. A at 6-11. Finally, Section 2 addresses the CV survey's flawed assumption that addressing poultry litter only, with or without alum treatments, will remediate alleged water quality issues in the IRW. *Id.* at 11-14.

Section 3 speaks specifically to the hypothetical alum treatment program that Plaintiffs told survey respondents would safely and effectively remediate waters in the IRW. *See id.* at 15-23; Mot. at 2-3. Dr. Connolly explains that alum treatment has a mixed history, and has proved most useful in lakes where the primary source of phosphorous is internal cycling. Mot. Ex. A at 16. Alum treatments also risk leaving water excessively acidic with unsafe aluminum levels. *Id.* at 16-17. Moreover, alum treatment can harm aquatic benthic, fish, and amphibian populations. *Id.* at 18. Because of the variability of the results of alum treatment, any such program must be preceded by "intensive nutrient and water analysis as well as an examination of the biotic communities." *Id.* at 17. Yet, without any such analysis, and without any mention of these ill effects, Plaintiffs' survey simply informed respondents, falsely, that alum could be harmlessly and effectively applied to IRW waters. *Id.* at 18. The survey similarly misrepresented the duration of alum treatment that would be required to address all phosphorous sources in the IRW, not just those that Plaintiffs' experts allege. *Id.* at 19-20. As Dr. Connolly explains, Plaintiffs' survey instrument misrepresented the efficacy and impact of alum treatments on both Lake Tenkiller and river waters in the IRW. *Id.* at 20-23.

Dr. Connolly is well qualified to opine on matters relating to water quality, including nutrient content, water chemistry, visibility, and the impacts of alum. Dr. Connolly holds a Ph.D. in environmental health engineering from the University of Texas. *See* Ex. 3 (Connolly

⁴ For example, the CV survey's representations regarding algae and fish in the IRW were substantially more aggressive than positions taken by Plaintiffs' science experts. *See* Mot. Ex. A at 6-11.

Resume); Ex. 4 (Connolly Dep.) at 41:4-7. He also holds an M.E. in environmental engineering and a B.E. in civil engineering, both from Manhattan College. *See* Ex. 3. Dr. Connolly is currently a principal with AnchorQEA, a leading environmental engineering firm. *Id.* He previously spent 14 years as a professor of environmental engineering at Manhattan College, and before that spent several years as a scientist with the EPA. *Id.* Dr. Connolly has extensive experience analyzing watersheds and other complex water systems to identify sources of alleged pollution and remedial alternatives. *Id.* He is widely published in the field, and has made many presentations on water quality issues. *Id.*

B. Dr. Coale

Section 4 of the Connolly Report, addressing the utility and effect of treating soil with alum as the CV survey proposes, is sponsored by Dr. Coale. *See* Mot. Ex. A at 24-28. As Dr. Coale explains, alum is an inappropriate treatment for many soils as it raises soil acidity, and therefore any proposal to apply alum must be studied on a field-by-field basis. *Id.* at 24. Increased soil acidity reduces forage grass production, undercuts cattle operations, and requires offsetting lime treatments, each of which will burden farmers and ranchers. *Id.* These effects are particularly acute in areas such as the IRW where many soils are already prone to acidity. *Id.* at 25-27. Despite the need for careful field-by-field assessment of the impact of alum treatment, and the well established potential negative effects such treatment can inflict, the CV survey simply proposed applying alum to fields throughout the IRW without differentiation or study, thereby misleading survey respondents about the feasibility of Plaintiffs' proposed remediation program. *Id.* at 27-28.

Dr. Coale is well qualified to testify to the agronomic effects of alum application. Dr. Coale holds a Ph.D. in soil fertility and an M.S. in crop physiology from the University of Kentucky, and a BS in agronomy from the University of Maryland. *See* Mot. Ex. F. He is

presently the chair of the Department of Environmental Science and Technology at the University of Maryland, where he has been a professor of agronomy and soil science since 2002. *Id.* He has been a professor in his field for more than 18 years, and is extensively published in the peer reviewed literature on agronomy. *Id.* Indeed, Dr. Coale is among the leading experts in his field.

C. Drs. Connolly and Coale Do Not Offer Economic or Sampling Theory Testimony

Plaintiffs do not actually challenge Dr. Connolly's and Dr. Coale's testimony or competence with regard to water quality and agronomic issues, nor their opinions regarding the efficacy of alum treatments. Nor indeed could they, given that Plaintiffs' own remediation expert, Mr. Todd King, rejected the use of alum treatments as a remediation strategy in the IRW for precisely the reasons raised by Dr. Connolly and Dr. Coale—that alum can be toxic to plants and wildlife. *See* Mot. Ex. A at 22, 25-26. Instead, Plaintiffs attack a straw man, asserting that there is a possibility that Dr. Connolly or Dr. Coale will testify regarding contingent valuation theory, survey sampling techniques, or similar points of economic theory. *See* Mot. at 4-9, 12-15.

Dr. Connolly and Dr. Coale have made abundantly clear that they do not intend to testify on subjects outside their areas of expertise in the natural sciences. They have repeatedly disclaimed any intent to testify on the points of economic theory that Plaintiffs address in their Motion. In fact, Plaintiffs' Motion quotes and cites some of the many points in the depositions of Drs. Connolly and Coale where these scientists clarified that neither witness purports to be an expert in these areas nor offers any such opinions. Mot. at 4-9. There is no confusion on this point. Neither Dr. Connolly nor Dr. Coale will give any testimony regarding contingent valuation theory or survey techniques.

Instead, the Connolly Report supplies the natural science facts and analysis necessary to evaluate the representations made in Plaintiffs' CV survey. Those facts and analysis are then used by Defendants' economics experts, Dr. Desvousges and Dr. Rausser, in their critique of Plaintiffs' CV survey. *See* Ex. 1 (Desvousges Rpt.) at 32-44. The Connolly Report is necessary because, just like Plaintiffs' economists and survey experts, Dr. Desvousges and Dr. Rausser are not natural scientists. Accordingly, Dr. Desvousges and Dr. Rausser relied on Dr. Connolly's and Dr. Coale's opinions in forming their own critique of the CV survey. Similarly, Drs. Connolly and Coale rely on Drs. Desvousges and Rausser for their understanding that such information is relevant to the accuracy of a CV survey. This is entirely appropriate under Rule 702.

Plaintiffs' argument to the contrary seizes on a handful of quotations lifted out of context from the Connolly Report. *See* Mot. at 12-15. But, far from opining as to sampling or economic theory, the point that Dr. Connolly and Dr. Coale make is that, to the extent that the natural sciences are relevant to the CV study, the CV study made false representations. Among other critiques, Drs. Connolly and Coale point out that the CV survey made statements about the condition of the IRW that were not supported by appropriate data, and then proposed a potentially dangerous remedy of alum treatments that likely would not have the positive effect Plaintiffs claimed, but rather would cause great injury. These topics and conclusions are well within Dr. Connolly's and Dr. Coale's competence. Plaintiffs' actual dispute is not with Dr. Connolly's⁵ and Dr. Coale's natural science testimony, but rather with Dr. Desvousges's and Dr.

⁵ Plaintiffs take issue with Dr. Connolly's suggestion that "common sense" suggests that survey participants may have valued the hypothetical alum program differently had they known that it carried potential to poison plants and aquatic life in the IRW. *See* Mot. at 5 n.2. Plaintiffs argue that, if Dr. Connolly is correct that this is an obvious point, Dr. Connolly's testimony should be excluded as unnecessary. But Plaintiffs cite no support for the proposition that in the course of

Rausser's testimony that such considerations are relevant to evaluating the CV survey. That issue is taken up *infra* in Section III. Dr. Connolly and Dr. Coale are competent and qualified to offer the opinions set out in the Connolly Report.

II. THE CONNOLLY REPORT IS A TIMELY AND APPROPRIATE RESPONSE TO PLAINTIFFS' DAMAGES TESTIMONY

The Connolly Report is a timely submitted and appropriate response to Plaintiffs' damages reports. Plaintiffs' effort to strike portions of the Report as untimely or cumulative are misplaced and should be rejected.

First, Plaintiffs argue that the Connolly Report should have been submitted by January 30, 2009, pursuant to the Court's Order of November 21, 2008, Dkt. No. 1805 ("Nov. 21, 2008 Order"). *See* Mot. at 15-16. But that Order regarded only Defendants' reports responding to Plaintiffs' previously-served non-damages expert reports. Specifically, the Court recognized that Plaintiffs' repeated service of late supplements and errata had "created a domino effect," requiring modification of other deadlines for Plaintiffs' reports and subsequent delays in Defendants responsive reports. Nov. 21, 2008 Order at 2. Because of Plaintiffs' multiple tardy modifications to their expert reports, the Court allowed Defendants additional time for their responsive reports. *Id.* at 2-3. The November 21, 2008 Order had nothing to do with expert reports as to damages. Indeed, Plaintiffs did not serve their expert reports as to damages, including the Stratus CV studies, until January 5, 2009, some six weeks *after* the Court's November 21, 2008 Order. *See* Amended Scheduling Order, Dkt. No. 1376 at 2 (Nov. 15, 2007). Plaintiffs' theory appears to be that Defendants should have guessed what misrepresentations

discussing issues of specialized expertise, such as the efficacy of alum treatment in a watershed, an expert is foreclosed from also noting out flaws that a jury may find appeals to common sense once the science is explained.

Plaintiffs' damages reports were going to make in a survey that took them two years to complete, and should have responded to those in a mere three weeks. Clearly, that is not the case. Instead, the Connolly Report was due on March 2, 2009, the date established by the Court's Amended Scheduling Order for Defendants to respond to Plaintiffs' expert reports as to damages. *Id.*

Nor is the Connolly Report cumulative as Plaintiffs argue. *See* Mot. at 16. Rule 403 authorizes the Court to prevent the "needless presentation of cumulative evidence." Fed. R. Evid. 403. But Plaintiffs nowhere identify which other of Defendants' experts have offered testimony regarding the factual underpinnings of the CV study. *See* Mot. at 16. They have not because they cannot. Only Drs. Connolly and Coale address directly the assumptions and misrepresentations indulged in by the economists and survey experts who designed the Stratus CV survey. The fact that the Stratus survey repeats mistakes made by Plaintiffs' natural science experts in their reports does not bar Defendants' experts from opining on the Stratus reports, or make those opinions cumulative. Indeed, Rule 26 requires the timely disclosure of all expert opinions in a signed expert report. Fed. R. Civ. P. 26(a)(2). In the absence of the Connolly Report, Plaintiffs could well have objected at trial to any of Defendants' experts opining on the validity of the assumptions underlying the CV survey on the basis that those opinions were not properly disclosed pursuant to Rule 26(a)(2).

III. THE CONNOLLY REPORT'S ANALYSIS AND CRITIQUE OF PLAINTIFFS' HYPOTHETICAL PROPOSED ALUM TREATMENT PROGRAM IS RELEVANT AND ADMISSIBLE

Plaintiffs argue that Dr. Connolly's and Dr. Coale's opinions regarding Plaintiffs' hypothetical proposal to treat waters and soils throughout the IRW with alum should be excluded as irrelevant. *See* Mot. at 17-25. This is a remarkable argument for several reasons.

First, Plaintiffs make no claim that alum treatments even are a viable method for remediating the injuries that Plaintiffs claim poultry litter has caused in the IRW. Indeed, as noted, Plaintiffs' own remediation expert admitted that Plaintiffs have not developed any evidence that alum could be utilized in the IRW with any degree of success, and that in fact alum applications are not appropriate in this case. *See* Mot. Ex. A at 22, 25-26; *see also* Ex. 5 (instructing Plaintiffs' experts to stop modeling the use of alum in the IRW because of concerns about its technical feasibility). While the parties agree that there is no evidence supporting the alum applications proposed in Plaintiffs' CV survey, only Drs. Connolly and Coale have explained the facts and circumstances about Plaintiffs' alleged injury, why alum will not work, and the significant negative side effects that would occur if Plaintiffs actually applied alum in the manner described in the CV survey.

Second, Plaintiffs do not dispute that their Stratus CV survey misled the survey respondents. Quite the contrary, Plaintiffs admit the story that their consultants told the survey respondents about alum applications and the effect they would have in the IRW was "information that is not factually correct." Mot. at 21-22. However, Plaintiffs argue that contingent valuation analyses commonly rely on the presentation of misleading or false information to survey participants, rendering the Connolly Report irrelevant. *Id.* According to Plaintiffs, the only question for the trier of fact is whether the Oklahoma citizens who participated in Plaintiffs' CV survey believed the falsehoods that Plaintiffs' consultants told them. In other words, Plaintiffs' argument boils down to an admission that Plaintiffs misled the survey respondents, and that the only question for the trier of fact is whether the survey respondents believed the lie they were told. Plaintiffs dismiss the rest of the story about the evidence (or lack of evidence) of a specific injury, whether alum applications will remediate that

injury, and the side effects of alum treatments on the IRW as “an unnecessary, unhelpful distraction to the trier of fact.” Mot. at 19.

But evidence is “relevant” when it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Despite Plaintiffs’ objections, the representations Plaintiffs made or did not make to survey participants regarding alum were clearly relevant to the survey outcome, and full information regarding the science underlying the alleged injury and the proposed remedy is relevant to assessing the CV survey’s accuracy as a measure of damages in this case. Unless the CV survey is excluded by this Court, *see* Defendants’ Motion to Strike Stratus Report, Dkt. No. 2272, the trier of fact must determine whether the CV survey presents a credible, reliable measure of damages. Information about whether the survey bears any relation to real-world conditions is obviously relevant to that inquiry. Moreover, even if Plaintiffs were correct that the only question for the trier of fact is whether the survey respondents believed the admitted falsehoods that they were presented, Defendants would be entitled to explore all of the facts relating to those falsehoods, including the extent to which the survey approximated the real-world truth.

A. The Connolly Report is Relevant to Assessing the Reliability of the CV Damages Estimation

Plaintiffs hope to offer their CV study to convince the factfinder that they are entitled to hundreds of millions of dollars in “natural resource damages.” *See* Ex. 6 (Stratus past damages report) at 1; Ex. 2 (Stratus future damages report) at ES-1. If the survey is presented at trial, the factfinder will be charged with assessing its reliability. A rational factfinder could well conclude that the reliability of survey responses is at least in part a function of the information that was presented to, or withheld from, the survey respondents.

Plaintiffs argue that the purpose of the survey was to “create a tradeoff for survey respondents in order to elicit their truthful valuations of the scenario outcome, namely an accelerated reduction in future natural resource injuries to the Illinois River System and Tenkiller Lake.” Mot. at 20 (quotations, emphasis omitted). Respondents were asked how much they would be willing to pay in a one-time tax for a government remediation program that would hasten the restoration of the IRW. *See id.* at 3. In essence, then, the “commodity” respondents were asked to bid on was the speeding up of the recovery timetable. *Id.* It is far from irrational to believe that some survey respondents may have based their valuation in part on their confidence that this government program would successfully meet this timeframe, would truly be a one-time-only tax, and appeared to have no ill side-effects. *See* Ex. 2 (Future Damages Rpt.) at 4-16 to 4-23. In other words, that respondents’ willingness-to-pay is a direct function of what they were told.

In fact, the record is clear that survey respondents did consider the efficacy of the proposed program in placing a value on its outcome. Respondents admitted that their votes and valuations were influenced by the fact that the presentation was: “one-sided;” “did not provide enough contradictory evidence regarding the alum treatment;” “seemed to only offer evidence to positive effect, but [not] any side effects to the contrary;” and was “slanted towards the alum treatments.” Ex. 1 (Desvousges Rpt.) at 40-41. Indeed, some survey respondents expressly stated that the provision of negative information regarding alum treatments would have altered their valuation of the proposed outcome. *See id.* Whether this was appropriate or not as a matter of CV survey theory is beside the point; the fact is that the respondents *did* consider the information given to them. Moreover, Plaintiffs’ consultants, Drs. Bishop and Krosnick, admitted that the hypothetical cleanup timeframes they chose do impact survey respondents’

willingness to pay. *See* Dkt. No. 2272 at 12-13 (citing Krosnick Dep. at 153:22-155:2 (recovery time had an impact on WTP), 122:15-18 (the results of the CV survey could have been different if the recovery times had been different in the proposed solution); Bishop Dep. at 65:2-67:4 (the rate of hypothetical restoration could have affected WTP and damages)). Yet, as the Connolly Report demonstrates, and as Plaintiffs' consultants admit, the Stratus CV authors simply made up the timeframes and the alleged science supporting them. *See id.* at 10-13. Given this, contrary evidence regarding alum treatments is essential to allow the factfinder to assess the reliability and accuracy of the survey results.⁶

The Connolly Report is similarly essential to allow jurors to assess the reliability of the information given to survey participants regarding the condition of the IRW. As argued in detail in Defendants' motion to strike the CV survey, representations made during a survey must be factually accurate and balanced in order to obtain accurate results. *See* Dkt. No. 2272 at 9-10. Plaintiffs' own CV experts admit as much. For example, Dr. Bishop testified that "if there is information in the survey that does not match what [the natural scientists] discovered, then there would be a problem with the survey." *Id.* Similarly, Dr. Tourangeau and Dr. Krosnik each testified that a respondent's willingness to pay is a function of the information presented, and that different information or a different wording of the presentation could lead to different results. *Id.*

⁶ Plaintiffs argue that this evidence is not relevant as a matter of contingent valuation theory. *See* Mot. at 21-22. Certainly, their experts can testify to that at trial, if their survey is admitted. But the jury is not bound to accept expert evidence or theories, or to give it any special weight, but rather are to give such testimony whatever weight it deserves under the same rules applicable to all witnesses. *See* Tenth Circuit Pattern Criminal Jury Instructions § 1.17. Simply put, the factfinder is entitled to disagree with Plaintiffs' theory, or to find it incredible or unreliable in this case.

As with some of their other experts' work, Plaintiffs' retained a "peer reviewer"⁷ to examine their CV study. This individual, Dr. Kerry Smith, specifically challenged Plaintiffs as to the accuracy of their factual representations.

Is everything factually correct and supportable from historical conditions, to the injury, to the restoration plan to the recovery time? If can not be supported, should not remain in the survey.
See Ex. 7 (Chapman e-mail) at 1; *see also id.* at 3-4 ("How confident are you in factual information? A real problem if not all information can be provided with the same level of precision. For example, you know the chicken numbers, but do not know the number of fish kills. Is there evidence to back up your fish-kill statement?").

Plaintiffs' consultants' conduct further confirms the relevance of such natural science testimony. The authors of the CV survey acknowledged having relied on Plaintiffs' natural scientists for the accuracy of the representations in the survey regarding conditions in the IRW and the efficacy of the alum treatment program. For example, Mr. Chapman, the CV project manager, testified that the claim that alum treatments would restore IRW waters to (assumed) 1960 conditions was based on "conversations with the natural scientists [that Plaintiffs retained as expert witnesses in this case] and -- multiple conversations and discussions with the natural scientists about what the sort of water clarity should have looked like." Ex. 8 (Chapman Dep.) at 138:8-17. The CV survey team relied generally on Plaintiffs' natural science expert reports. *See id.* at 138:18-139:2. They relied on Plaintiffs' natural science experts for the survey's representations regarding fish and other biota, *see id.* at 150:23-151:8, phosphorous levels and loading, *see id.* at 153:8-154:1, 205:10-207:20, the effects of remediation, and historical

⁷ As Defendants have noted in other *Daubert* motions, such review by hired experts does not constitute the sort of rigorous and independent peer review contemplated by *Daubert* jurisprudence. *See* Defendants' Reply in Support of Motion to Exclude the Testimony of Dr. Valerie Harwood, Dkt. No. 2159 at 4-6 (June 5, 2009); Defendants' Reply in Support of Motion to Exclude the Testimony of Dr. Roger Olsen, Dkt. No. 2252 at 4 (June 19, 2009).

conditions, *see id.* at 177:4-181:2. Dr. Hanemann similarly acknowledged basing the survey on the representations of Plaintiffs’ natural scientists. *See* Ex. 9 (Hanemann Dep.) at 37:7-20; *see also id.* 38:3-15 (relying on natural scientists for choice of 1960 as start date); 42:15-25 (“The facts regarding the injury came from the natural scientists working for the state....”). In fact, Dr. Hanemann testified that the CV study authors took “steps to assure the accuracy of this information [by] collect[ing] information from the scientists working for the state.” *Id.* at 52:5-20. If the accuracy of the factual information provided to survey respondents is truly irrelevant, it is unclear why Plaintiffs’ CV experts went to such lengths to consult with and rely on Plaintiffs’ natural science experts.⁸

In fact, Plaintiffs’ natural scientists began the task of studying what effect, if any, alum treatments would have in the IRW. *See* Ex. 5 (emails from Plaintiffs’ natural scientists discussing whether to model alum applications in the IRW). However, for strategic and resource-related reasons, Plaintiffs’ counsel expressly instructed their natural scientists to stop work on the alum-related analysis, and that work was never finished. *See id.* (instructing Plaintiffs’ experts not to model alum applications “because of timing” and because “[c]oncerns have been raised with the technical feasibility” of alum applications). The fact that Plaintiffs elected not to complete their work analyzing the effect of alum applications in the IRW (and never gathered evidence to support their claims about the IRW’s supposed conditions) does not

⁸ Plaintiffs’ consultants testified that they relied principally on the interactions that one of them, Dr. Bishop, had with Plaintiffs’ natural scientists, for ensuring the accuracy of the injury description in the CV survey. *See* Dkt. No. 2272 at 14-15. Dr. Bishop, in turn, admitted that much of the information reflects “a judgment call on my part” whether the information provided by the scientists was accurate. *Id.* In fact, Stratus began drafting the survey prior to the time that Plaintiffs’ natural scientists had reached conclusions regarding the alleged injury. *Id.* Thus, having taken the time to consult natural scientists, the CV authors nevertheless proceeded without the benefit of their instruction, further undercutting the reliability of the representations made to survey respondents.

render those inquiries irrelevant. Indeed if the facts of the alum program were truly irrelevant to the survey outcome, then why include it at all? Why not ask respondents simply to state how much they would be willing to pay to restore the IRW to some fictional past pristine condition without stating any mechanism for doing so? The reason for including the alum program, Plaintiffs explain, is to convince respondents “that the outcome can be secured,” Mot. at 3, and in doing so the survey vehicle put a strong thumb on the scale in favor of the desired outcome. For example, respondents were told that alum was safe—that it is used in food products and can be played with by children. *See* Ex. 1 (Desvousges Rpt.) at 33. Respondents were told that alum applied to the land is “harmless,” and that alum has been used successfully and safely to remediate many waterways. *Id.*; *see also* Mot. at 2-3 (describing survey’s use of alum treatment hypothetical). Respondents were not told that alum may make the water and soil acidic, kill fish and plants, reduce crop growth, and undercut ranching operations. *See* Mot. Ex. A at 15-28. A rational survey participant could well find a given outcome less desirable in view of the cost that accompanies it; and a rational juror could well find a value given under such circumstances less than reliable. The truth about alum, therefore, is highly relevant to the factfinder’s evaluation of the Stratus CV survey.⁹

B. The Connolly Report is Relevant to Assessing Whether the Stratus CV Survey Measures Natural Resource Damages

Plaintiffs’ CV reports purport to measure natural resources damages. *See* Ex. 6 at 1; Ex. 2 at ES-1. This representation is necessary as Plaintiffs seek to recover natural resource damages under CERCLA’s natural resource damage scheme. But CERCLA provides unambiguously that natural resource recoveries shall be limited to the cost of restoring or replacing injured natural

⁹ Plaintiffs’ reliance on the Court’s May 7, 2009, order is misplaced as that order simply delayed questions regarding Plaintiffs’ CV survey to the *Daubert* stage. *See* Dkt. No. 2023. It did not resolve anything regarding that survey. *Id.*

resources. *See* 42 U.S.C. § 9607(f). Indeed, the Tenth Circuit has made clear that under CERCLA, “[t]he *measure and use* of damages arising from the release of hazardous waste is restricted to accomplishing CERCLA’s essential goals of restoration or replacement, while also allowing for damages due to interim loss of use.” *New Mexico v. General Electric*, 467 F.3d 1223, 1244-45 (10th Cir. 2006) (emphasis in original). If Plaintiffs’ CERCLA NRD claim proceeds to trial, and if Plaintiffs are permitted to introduce their CV survey, the Connolly Report’s discussion of the efficacy and side effects of alum treatments will be relevant to allowing the factfinder to assess whether Plaintiffs’ CV study actually measures the cost to restore or replace an injured natural resource.

The fact is that by Plaintiffs’ own representations, it does not. Plaintiffs argue that the accuracy of the alum treatment program is irrelevant to the CV survey because the only purpose of the proposed remediation program is to “elicit survey respondents’ truthful valuations of the scenario outcome, namely and [sic] accelerated reduction in future natural resource injuries to the Illinois River System and Tenkiller Lake.” Mot. at 19 (quotations omitted). In other words, survey respondents were not asked to value a particular remediation or replacement program, but rather were asked only to value the assumed outcome of that program – the acceleration of this hypothetical restoration to some assumed past state. If that is true, then survey respondents were asked to bid on the wrong thing, at least insofar as CERCLA’s NRD scheme goes. Plaintiffs have put forward no evidence to demonstrate that the conjectured value of this assumed outcome equates to the cost to replace or remediate an injured natural resource, or represents “the acquisition [cost] of its equivalent.” *New Mexico*, 467 F.3d at 1247.

The Connolly Report proves the contrary. It demonstrates that Plaintiffs have no evidence that the condition of the IRW in 1960 was as the CV survey claims, or that it was, in

fact, demonstrably better than conditions today. Without such evidence, 1960 cannot serve as the baseline to which natural resources are to be restored. Moreover, survey respondents were not provided with pertinent information as to the negative effects of alum treatments. *See* Mot. Ex. A at 15-29. The only “restoration” program to which survey respondents were exposed could in fact substantially injure natural resources in the IRW, not to mention adversely impact farming and ranching operations in the IRW. *See supra* at 5. This undercuts any claim that the Stratus CV survey measures the cost to actually restore or replace injured natural resources.

Plaintiffs have also attempted to put forth a measure of what people are willing to pay for the peace of mind associated with knowing that the IRW is in good condition. *See* Ex. 2 (Future Damages Rpt.) at 1-4 to 1-5, 2-3 to 2-4. Plaintiffs call this peace of mind “non-use damages” in their CV survey, because they concede that it measures the value of mental well-being for people who will never use the IRW as a natural resource. *Id.* This is not the same as “restoration or replacement” of an injured natural resource, nor does it measure “damages due to interim loss of use.” *New Mexico*, 467 F.3d at 1244-47. The Court and the factfinder are entitled to know this, and to reject the Stratus CV survey as measuring something other than the damages permitted by CERCLA.

C. Even if Plaintiffs’ Position Were Correct, the Connolly Report is Relevant to Whether the Survey Respondents Believed the False Statements Presented in the CV Survey

As noted above, Plaintiffs’ own CV consultants have repeatedly admitted that their CV survey cannot be relied upon if it presented the survey respondents with an inaccurate statement of the IRW’s conditions or the prospects for success with the hypothetical remediation proposal. *See supra* at 12-14. For that reason, Plaintiffs’ CV consultants repeatedly consulted with Plaintiffs’ natural scientists—the very types of scientists Plaintiffs now ask the Court to exclude from the defense presentation. *Id.* For this reason alone, the Connolly Report’s analysis of the

IRW's conditions and the real-world impacts of Plaintiffs' hypothetical remediation scheme are relevant and admissible.

However, Plaintiffs now take the position that the veracity of their statements to the CV survey respondents is irrelevant, and the only question for the finder of fact is whether the respondents believed the admittedly inaccurate information Plaintiffs presented in the CV survey. Motion at 19-25. Even if this assertion were true (and it is not for the reasons stated above), the Connolly Report would be relevant to this factual inquiry. Plaintiffs' consultants attempted to evaluate whether the respondents believed the information they were presented. *Mot.* at 21-22; Ex. 2 (Future Damages Rpt.) at 4-31 to 4-35, 6-4 to 6-7. Plaintiffs offer that evaluation as one set of facts the factfinder might examine in determining whether the survey participants believed what they were told and responded honestly and accurately, and indeed their report notes a high correlation between belief in the efficacy of the alum treatment proposal and willingness-to-pay larger amounts for it. *See id.* at 6-7. But Plaintiffs cannot deny the Defendants the right to put forward their own information on whether respondents believed what they were told. And, of course, a key measure of whether a falsehood was believed is the extent to which it is believable.

The factfinder is entitled to know how far Plaintiffs' statements were from the real-world truth, and to take that into account in deciding whether Plaintiffs' statements could have been believed. As just one example, the survey respondents were informed that Plaintiffs could apply massive amounts of alum—a metal—across a million-acre watershed with no negative side effects. *Id.* at 4-16 to 4-23. A logical person may doubt the truthfulness of such representations, and the best measure of whether such a statement is believable is to compare it with the truth. Similarly, Plaintiffs told respondents (without supporting data) that the IRW is in much worse

condition than in 1960, and that poultry litter is a dominant source of phosphorus in this massive watershed—downplaying the impact of the myriad other sources of phosphorus compounds that are associated with human activity. *Id.* at 4-8 to 4-15. Again, one measure of whether the respondents, in fact, believed these statements is how far they are from the real-world truth. *See, e.g., Personnel Dept., Inc. v. Professional Staff Leasing Corp.*, 297 Fed. Appx. 773, 785-88 (10th Cir. 2008) (unpublished) (evidence of established judicial determination admissible to rebut claim of *bona fide* belief to the contrary). Knowing the truth about (1) the current and historical conditions in the IRW; (2) the sources of phosphorus compounds in the IRW; and (3) the likely effect of massive applications of aluminum sulfate to the environment gives the factfinder a context in which to evaluate whether or not individuals could be expected to believe statements that are contrary to that truth. For each, the Connolly Report supplies the truth. As the ultimate arbiter of factual disputes and credibility, the factfinder is entitled to the complete evidence about the alleged facts and is not limited to the evidence that one side puts forth to support their position. *See Allen v. Wal-Mart Stores, Inc.*, 241 F.3d 1293, 1297 (10th Cir. 2001) (“The weighing of evidence, the reconciliation of inconsistent testimony, and the assessment of a witness’ credibility is solely within the province of the jury”); *Thunder Basin Coal Co. v. S.W. Pub. Serv. Co.*, 104 F.3d 1205, 1212 (10th Cir. 1997) (“The jury ... has the exclusive function of appraising credibility, determining the weight to be given to the testimony, drawing inferences from the facts established, resolving conflicts in the evidence, and reaching ultimate conclusions of fact” (quoting *Kitchens v. Bryan County Nat’l Bank*, 825 F.2d 248, 251 (10th Cir. 1987))).

CONCLUSION

For the foregoing reasons, the Connolly Report is relevant to the issues before the Court and admissible. Defendants respectfully oppose Plaintiffs’ motion to exclude the opinions set forth in the Connolly Report.

Respectfully submitted,

BY: /s/ Jay T. Jorgensen
Thomas C. Green
Mark D. Hopson
Jay T. Jorgensen
Gordon D. Todd
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

-and-

Robert W. George
Vice President & Associate General Counsel
Tyson Foods, Inc.
2210 West Oaklawn Drive
Springdale, Ark. 72764
Telephone: (479) 290-4076
Facsimile: (479) 290-7967

-and-

Michael R. Bond
KUTAK ROCK LLP
Suite 400
234 East Millsap Road
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007

-and-

Patrick M. Ryan, OBA # 7864
Stephen L. Jantzen, OBA # 16247
RYAN, WHALEY & COLDIRON, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
ATTORNEYS FOR TYSON FOODS, INC.;
TYSON POULTRY, INC.; TYSON

**CHICKEN, INC; AND COBB-VANTRESS,
INC.**

BY: /s/James M. Graves

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

Woodson W. Bassett III
Gary V. Weeks
James M. Graves
K.C. Dupps Tucker
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702-3618
Telephone: (479) 521-9996
Facsimile: (479) 521-9600

-and-

Randall E. Rose, OBA #7753
George W. Owens
OWENS LAW FIRM, P.C.
234 W. 13th Street
Tulsa, OK 74119
Telephone: (918) 587-0021
Facsimile: (918) 587-6111
**ATTORNEYS FOR GEORGE'S, INC. AND
GEORGE'S FARMS, INC.**

BY: /s/ A. Scott McDaniel

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

A. Scott McDaniel, OBA #16460
Nicole M. Longwell, OBA #18771
Philip D. Hixon, OBA #19121
McDANIEL, HIXON, LONGWELL
& ACORD, PLLC
320 South Boston Ave., Ste. 700
Tulsa, OK 74103
Telephone: (918) 382-9200
Facsimile: (918) 382-9282

-and-

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800

Little Rock, AR 72201
Telephone: (501) 688-8800
Facsimile: (501) 688-8807
**ATTORNEYS FOR PETERSON
FARMS, INC.**

BY: /s/ John R. Elrod
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

John R. Elrod
Vicki Bronson, OBA #20574
P. Joshua Wisley
CONNER & WINTERS, L.L.P.
211 East Dickson Street
Fayetteville, AR 72701
Telephone: (479) 582-5711
Facsimile: (479) 587-1426

-and-

Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, L.L.P.
4000 One Williams Center
Tulsa, OK 74172
Telephone: (918) 586-5711
Facsimile: (918) 586-8553
**ATTORNEYS FOR SIMMONS FOODS,
INC.**

BY: /s/ Robert P. Redemann
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

Robert P. Redemann, OBA #7454
PERRINE, MCGIVERN, REDEMANN,
REID, BERRY & TAYLOR, P.L.L.C.
Post Office Box 1710
Tulsa, OK 74101-1710
Telephone: (918) 382-1400
Facsimile: (918) 382-1499

-and-

Robert E. Sanders
Stephen Williams
YOUNG WILLIAMS P.A.
Post Office Box 23059
Jackson, MS 39225-3059
Telephone: (601) 948-6100
Facsimile: (601) 355-6136
**ATTORNEYS FOR CAL-MAINE FARMS,
INC. AND CAL-MAINE FOODS, INC.**

BY: /s/ John H. Tucker

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
John H. Tucker, OBA #9110
Theresa Noble Hill, OBA #19119
RHODES, HIERONYMUS, JONES, TUCKER &
GABLE, PLLC
100 W. Fifth Street, Suite 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100
Telephone: (918) 582-1173
Facsimile: (918) 592-3390

-and-

Delmar R. Ehrich
Bruce Jones
Krisann C. Kleibacker Lee
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
**ATTORNEYS FOR CARGILL, INC. AND
CARGILL TURKEY PRODUCTION, LLC**

CERTIFICATE OF SERVICE

I certify that on the 7th day of July, 2009, I electronically transmitted the attached document to the court's electronic filing system, which will send the document to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Tina L. Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Daniel Lennington, Assistant Attorney General	daniel.lennington@oak.ok.gov

Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
David P. Page	dpage@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
-------------------	--------------------

Louis W. Bullock	lbullock@bullock-blakemore.com
------------------	--------------------------------

Michael G. Rousseau	mrousseau@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
Motley Rice LLC	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Motley Rice	

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	

Mark D. Hopson	mhopson@sidley.com
----------------	--------------------

Jay Thomas Jorgensen
Timothy K. Webster
Gordon D. Todd
Sidley Austin LLP

jjorgensen@sidley.com
twebster@sidley.com
gtodd@sidley.com

Robert W. George

robert.george@tyson.com

Michael R. Bond
Erin Walker Thompson
Kutak Rock LLP

michael.bond@kutakrock.com
erin.thompson@kutakrock.com

COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirmnpc.com
rer@owenslawfirmnpc.com

James M. Graves
Gary V. Weeks
Paul E. Thompson, Jr.
Woody Bassett
Jennifer E. Lloyd
Bassett Law Firm

jgraves@bassettlawfirm.com
pthompson@bassettlawfirm.com
wbassett@bassettlawfirm.com
jlloyd@bassettlawfirm.com

COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod
Vicki Bronson
P. Joshua Wisley
Conner & Winters, P.C.

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com

Bruce W. Freeman
D. Richard Funk
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

bfreeman@cwlaw.com

John H. Tucker
Leslie J. Southerland
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com
ljsoutherlandcourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Dara D. Mann
Todd P. Walker
Faegre & Benson LLP

dehrich@faegre.com
bjones@faegre.com
kklee@baegre.com
dmann@faegre.com
twalker@faegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

Michael D. Graves
D. Kenyon Williams, Jr.
COUNSEL FOR POULTRY GROWERS

mgraves@hallestill.com
kwilliams@hallestill.com

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood

wfederman@aol.com
jfs@federmanlaw.com

Charles Moulton
Jim DePriest
Office of the Attorney General

charles.moulton@arkansag.gov
jim.depriest@arkansasag.gov

COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

Carrie Griffith
COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON

griffithlawoffice@yahoo.com

Gary S. Chilton
Holladay, Chilton & Degiusti, PLLC

gchilton@hcdattorneys.com

Victor E. Schwartz
Cary Silverman
Shook, Hardy & Bacon, LLP

vschwartz@shb.com
csilverman@shb.com

Robin S. Conrad
National Chamber Litigation Center, Inc.
**COUNSEL FOR AMICI CURIAE CHAMBER OF COMMERCE FOR THE U.S. AND
THE AMERICAN TORT REFORM ASSOCIATION**

rconrad@uschamber.com

Richard C. Ford
LeAnne Burnett
Crowe & Dunlevy
COUNSEL FOR AMICUS CURIAE OKLAHOMA FARM BUREAU, INC.

fordr@crowedunlevy.com
burnettl@crowedunlevy.com

M. Richard Mullins
McAfee & Taft

richard.mullins@mcafeetaft.com

James D. Bradbury
James D. Bradbury, PLLC
**COUNSEL FOR AMICI CURIAE TEXAS FARM BUREAU, TEXAS CATTLE
FEEDERS ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND TEXAS
ASSOCIATION OF DAIRYMEN**

jim@bradburycounsel.com

I also hereby certify that I served the attached documents by United States Postal Service,
proper postage paid, on the following who are not registered participants of the ECF System:

J.D. Strong
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Dustin McDaniel
Justin Allen
Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610
**COUNSEL FOR THE STATE OF
ARKANSAS AND THE ARKANSAS
NATURAL RESOURCES COMMISSION**

/s/ Jay T. Jorgensen